

**IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR THE COUNTY OF PALM BEACH, FLORIDA**

**FINAL PRESENTMENT  
OF THE  
PALM BEACH COUNTY GRAND JURY**

**INVESTIGATION OF PALM BEACH COUNTY  
GOVERNANCE AND PUBLIC CORRUPTION ISSUES**

**SPRING TERM A.D. 2009**



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**May 21, 2009**

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**INVESTIGATION OF PALM BEACH COUNTY  
GOVERNANCE AND PUBLIC CORRUPTION ISSUES**

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
SPRING TERM 2009

IN RE: PRESENTMENT OF THE GRAND JURY CONCERNING INVESTIGATION  
OF PALM BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION  
ISSUES

CHIEF JUDGE KATHLEEN J. KROLL, PRESIDING

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

**I. GRAND JURY SUMMARY**

The Grand Jury finds that Palm Beach County currently is facing a crisis of trust in public governance. In the past several years, three county and two West Palm Beach city commissioners have pled guilty to federal corruption charges. Indeed, the reputation of Palm Beach County has deteriorated to the point that Palm Beach County is derisively referred to as "Corruption County." The erosion of public trust in the institutions of governance, whether caused by actual or perceived corruption, has undermined the legal, political and economic pillars which support this community.

While some tentative efforts are being made within the county government to combat the pervasive perception of corruption, the core aspects of effective governance - accountability and transparency - are not being adequately addressed. Solutions to these problems will prove elusive unless and until meaningful independent oversight exists to identify waste, fraud and abuse in county government practices. The Grand Jury finds such meaningful, independent oversight to be a necessary ingredient in good governance and not an option. In addition, the Grand Jury finds that current state laws governing both ethics and criminal misconduct are

inadequate to effectively deter the broad-based misconduct (including non-disclosure of personal interests and conflicts) that has become all too common, not only in Palm Beach County, but throughout the State of Florida.

Based on our findings, the Grand Jury makes numerous specific recommendations to address the most pressing of the issues which have led us to this crisis of confidence in good governance: 1) strengthen state criminal statutes and county ordinances to address conflict of interest, gratuity and theft of honest services by public servants; 2) fully fund an effective independent "watchdog" entity to monitor the activities of the county government; 3) increase transparency, accountability and oversight of county matters involving land transactions; 4) eliminate bond underwriting by rotation and adopt the Government Finance Officers Association (GFOA) recommended practices; and 5) eliminate the current system of commissioner-based discretionary funding of county recreation and infrastructure projects.

## **II. BACKGROUND AND SCOPE**

This Grand Jury investigation was called for by State Attorney Michael McAuliffe to review certain specific areas of Palm Beach County governance and to make appropriate findings and recommendations to improve governance in Palm Beach County. Pursuant to Florida Stat. §905.16, the Grand Jury is uniquely situated as the "guardian of all that is comprehended in the police power of the State." *Owens v. State*, 59 So. 2d 254 (Fla. 1952). Unlike a Federal Grand Jury, Florida grand juries can, and should, serve a dual purpose in that:

[Florida grand juries]...have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike and to return indictments when warranted, and also have a lawful and proper function to consider actions of public bodies and officials in use of public funds and report or present findings and recommendations as to practices, procedures,

incompetency, inefficiency, mistakes and misconduct involving public officers and public monies.

*Kelly v. Sturgis*, 453 So. 2d 1179 (5<sup>th</sup> DCA 1984).

The objective of this Grand Jury was to review and report on five areas of county governance. The areas chosen represent a cross section of governmental processes and activities within Palm Beach County (PBC Organizational Chart attached as Exhibit 1). The areas of review included specific government functions within the county as well as issues related to anti-corruption efforts. Specifically, the Grand Jury reviewed: 1) Palm Beach County bond underwriting practices; 2) county commissioner's discretionary funds; 3) the county's internal and external auditing system; 4) Palm Beach County governmental land transactions; and 5) existing criminal, ethics and other public integrity laws. The Grand Jury believes these specific areas of inquiry adequately reflect the larger governance landscape in Palm Beach County.

The Grand Jury gathered information regarding each issue area, then evaluated the evidence submitted, reached findings and made recommendations. The Grand Jury heard from numerous witnesses, including government employees, private citizens, business leaders, attorneys and elected officials including constitutional officers. The Grand Jury reviewed thousands of pages of documents ranging from policy and procedure manuals to published articles and state and federal statutes (both current and proposed). Testimony included information about other anti-corruption initiatives adopted in other Florida counties. As a result of this inquiry, the Grand Jury was able to make specific findings and recommendations, both on the county and state level.

The Board of County Commissioners currently is taking steps to change some practices; however, the Grand Jury finds that the Commission must take additional and bolder steps – in

short, the Commission must lead in the effort to restore confidence and faith that elected officials serve the public's interests and not their own.

### **III. DISCUSSION**

#### **A. BOND UNDERWRITING**

##### **1. Current Practices and Procedures**

The Grand Jury reviewed the Palm Beach County's issuance and underwriting of bonds. Bonds are issued by governments to finance large capital projects and spread the cost of these improvements over a number of years. In this way, the county can fund needed projects that benefit current and future taxpayers alike. As of September 30, 2008, the total outstanding debt for Palm Beach County was approximately \$1.89 billion. During fiscal year 2008, Palm Beach County incurred \$445 million in new debt and made debt payments totaling \$200 million or approximately \$320 per taxpayer.

The Grand Jury identified two basic means of selling bonds - competitive bids and negotiated sales. According to the Government Finance Officer's Association (GFOA) recommended practices (attached as Exhibit 2), the most cost effective means of marketing general obligation bonds by a political subdivision with a solid tax base is through the competitive bid process. Bonds that are seen as less secure generally are underwritten by negotiated sale. Documents and testimony revealed that competitive sales on "full faith and credit" backed bonds were standard operating procedure in Palm Beach County prior to 1993. In 1992, the Board of County Commissioners ("BCC") made a decision that all bond underwriting would be by negotiated sale. This decision was against the recommendation of the PBC Office

entities such as the Business Development Board (BDB) and the CVB are not subject to the Florida sunshine or ethics laws.

Since 2006, the county has taken some steps in establishing more effective and transparent oversight of the CVB. Subsequent agreements between Palm Beach County and Discover Palm Beach County, Inc. (d/b/a Palm Beach County Convention and Visitors Bureau) address specific areas including conflict of interest, the formation of new oversight audit and finance committees, travel policy, permissible expenses and reimbursement, performance measures, industry certification, and term limits on independent audit firms and legal counsel. While these post-CVB scandal steps should be acknowledged, there is no county-wide policy regarding other non-profit organizations funded, in whole or in part, by Palm Beach County tax dollars. In addition, the county agreements do not contain forensic audit provisions.

In sum, the Grand Jury finds that the current internal auditor's office and external auditor's function do not have any meaningful anti-fraud roles. Further, the Grand Jury finds that the dependence on the BCC renders them ineffective as prospective anti-fraud players in this county.

#### **EXPANDED ROLE FOR OFFICE OF CLERK/COMPTROLLER**

The Grand Jury heard a number of proposals to create or develop a functional watchdog entity for the county. One such proposal involved an expansion of audit services provided by the Office of the Clerk (attached as Exhibit 19). The proposal includes the formal assignment of "inspector general" type responsibilities to the Office of the Clerk through the approval of an amendment to the County Charter by Palm Beach County voters. The components of such a change include the establishment of the Office of the Clerk as the independent auditor for county government.



First, the Grand Jury commends the Office of the Clerk's proactive efforts in establishing an audit services division and the retention of certified fraud auditors. The Grand Jury recognizes the Office of the Clerk's position has institutional and working knowledge of county finances. The Grand Jury also recognizes that the Office of the Clerk's proposal is to expand beyond the office's current record-keeping, auditing and ministerial duties.

The Grand Jury also evaluated the Office of the Clerk's proposal for collaboration of the Office of the Clerk, the Sheriff's Office and the State Attorney's Office in providing an independent watchdog system of audits, investigation and prosecution which, by definition, includes a law enforcement and prosecutorial component. The Grand Jury notes that the proposed "justice partnership" authorizing the Office of the Clerk, as a newly minted independent auditor for the county, to support the prosecutive powers of the State Attorney's Office and investigative duties of the Sheriff's Office applies only to cases of actual or potential criminal misconduct and not to mismanagement, waste, abuse and other non-criminal actions.

First, effective independent oversight involves ferreting out waste, mismanagement and abuse in addition to criminal fraud. For example, in Miami-Dade County, half of the Office of Inspector General investigations involve non-criminal matters.

Further, the Office of the Clerk acts as the Chief Financial Officer (CFO) for the county. An inherent conflict may exist when a CFO also acts an independent watchdog of the entity it serves in a supporting role.

The Grand Jury also has concerns regarding the prospect of the Office of the Clerk, one constitutional office, exerting broad authority over the policy decision-making of an independently elected governance body. The Office of the Clerk's function is to keep the county's books and to hold its funds. The risk in the Office of the Clerk's proposal is that its

forensic audit function morphs into an eighth commissioner role. This risk is heightened because – unlike an independent appointed OIG – the Office of the Clerk has non-audit duties to the BCC and also is elected.

The Grand Jury cannot ignore the clash of roles that arises when elected governmental offices or entities overlap and are structurally in tension. The Grand Jury is aware that a significant level of acrimony exists between the BCC and the Office of the Clerk regarding matters of oversight, public policy and areas of responsibility. Numerous witnesses both within and without government had strong reservations regarding any proposal giving broad independent post-auditing powers to the Office of the Clerk. The Grand Jury finds from the evidence presented that the current relationship between the Office of the Clerk and the BCC is palpably strained. The Grand Jury finds little common ground with which to build the trust necessary to achieve efficient and effective oversight of county government functions. The Office of the Clerk and the Commission do not start from scratch with each other in these matters.

#### **OFFICE OF INSPECTOR GENERAL (O.I.G)**

The Grand Jury heard testimony and received documentary evidence regarding the Miami-Dade County Office of Inspector General (OIG). The OIG model was examined because it was the direct result of Miami-Dade County's ongoing corruption battles in the 1990s. The Grand Jury sought to benefit from the approach and experience of another large South Florida County.

The Miami-Dade OIG was established by ordinance in 1998 (attached as Exhibit 20). The initial budget was approximately \$200,000 and the Inspector General shared office space, a secretary and legal counsel with the Miami-Dade Commission on Ethics. Within the first year of

operation the OIG uncovered several multi-million dollar scandals which resulted in substantial restitution to the county. The Miami-Dade Commission subsequently increased the OIG staff to 15 employees.

The Inspector General initially was chosen by the Commission on Ethics, but the process was modified. Currently, a panel consisting of the State Attorney, the Public Defender, Director of the Florida Department of Law Enforcement (FDLE), the President of the Miami-Dade County Chiefs of Police and one member of the Commission on Ethics selects and provides oversight to the Inspector General. The only aspect of the OIG that is connected to County Government is budget approval. The OIG has a staff of 38, including agents, auditing staff, attorneys, criminal analysts and clerical support. The OIG's current budget is approximately \$5.5 million.

Notably, in fiscal year 2006-2007 actual OIG expenditures were below budget and most of the OIG funding came from sources other than general county funds. These funding sources include a proprietary fee of one quarter of one percent (.25%) on all county contracts and agreements with revenue producing entities to pay for investigative work done at their departments. Miami-Dade county departments which receive revenue, such as the airport, the transit department, the water and sewer department, the solid waste department, all independently contract with the OIG to pay for investigative work done at their departments. OIG personnel are housed at those departments and handle inquiries/investigations on site (sample memorandum of understanding attached as Exhibit 21).

In fiscal year 2007-08, the OIG drew only approximately \$363,000 from general county funds (approximately seven percent of its budget). Agreements with revenue producing departments covered approximately twenty three percent or \$1.3 million while proprietary fees

and restitution generated approximately \$2.2 million dollars. In addition, the OIG had a carry over from the previous fiscal year of \$1.7 million (OIG report attached as Exhibit 22).

The Miami-Dade OIG administers a hotline and callers can remain anonymous. According to documents provided by the OIG, during fiscal year 2006-2007 a total of 586 complaints were received through the hotline (2,095 complaints have been handled during the past five years). Approximately eight percent of the complaints received resulted in the OIG initiating an inquiry, investigation or review; 10% were related to a matter already under OIG investigation or review; 43% were referred to another agency for appropriate action; 26% did not warrant any further action; 8% were from and handled by its dedicated housing hotline and 5% are still under review for further determination.

The Miami-Dade OIG has the power to demand reports, documents and information from any county official or other entity over which the county has jurisdiction. In addition, county contracts require any entity doing business with the county to cooperate with the OIG.

According to documents provided by the OIG: "During its first decade of operations, the OIG identified over \$106 million dollars in questionable costs, losses and damages and lost revenues through IOG investigations, audits and reviews. Since 1998, over \$60 million in future savings and restitution has been achieved for the county."

The Grand Jury heard testimony from a 22 year veteran corruption prosecutor from the Miami-Dade County Office of the State Attorney. The prosecutor stated:

To expect criminal investigation and prosecution to solve that entire problem is not realistic. We can pick out...corrupt officials from time to time and bring them to justice, but that doesn't deal with the management issue, the flaws in the structure of the agency, the unaccountability of the agency that might have created the climate for this corrupt activity to occur. So you really need a capacity to burrow into a corrupt agency and do more than just cherry-pick corrupt officials. You need to find out...what is the

basis for the problem. And when you have an Inspector General with those kinds of investigative resources who are trained to look at government and to criticize government and to find the flaws and propose the solutions, it's almost like having a Grand Jury that is always in session just looking at government corruption.

In assessing the viability of an OIG in Palm Beach County, the Grand Jury fully recognizes the challenges inherent in establishing an additional component of government as part of the solution to government's potential waste, fraud and abuse. The Grand Jury observed reluctance, if not outright hostility, to funding such an entity. While a broad consensus is emerging that an independent watchdog is needed in county governance, no such consensus exists yet on the means to achieve it. Of course, the funding issue may not need consensus, it simply may need leadership.

While the Grand Jury needed to hear from witnesses with divergent views and place appropriate weight on competing views and approaches, in the end, the goal was to objectively evaluate the current structure and identify specific steps needed to be taken to improve it. The proposed solutions all involve some cost, however, funding need not be onerous. For example, for the amount of funds in one commissioner's single year discretionary allocation, Palm Beach County could create and fund an Office of Inspector General or other independent audit entity.

The Grand Jury also heard testimony that the collaboration of the OIG and State Attorney's Office in Miami-Dade County has saved millions of dollars by ferreting out corruption, fraud and waste. The Miami-Dade County Inspector General described the advantages this way:

The traditional corruption is the type of stuff that you love to read about in the newspaper. You know, this Commissioner gets arrested for taking a bribe, or that Sheriff's Deputy stole drugs and is selling it on the street...and the newspapers love to read about this stuff...but I submit that that is probably about ten percent of the corruption we see in government. The real corruption is non-

traditional, and it's the corruption of waste, fraud, mismanagement and abuse. And as I recall the Certified Fraud Examiners Institution, and other institutes, have basically said that essentially out of every dollar that government takes in as revenue, ten percent of it is lost because of waste, mismanagement and abuse...Most of the resources that we see employed to combat corruption go to the traditional side...Very little bit is left with the non-traditional. And as a result, we have these huge problems of waste, mismanagement and millions and millions and millions of dollars of taxpayer money was squandered. That is why an Inspector General's Office is so critically important...

### **3. Findings and Recommendations**

The Grand Jury finds that a fundamental need exists for an entity within the Palm Beach County governmental structure with meaningful independence from the governing body to be an effective "watchdog" for the citizens of Palm Beach County. The need for effective oversight of county governance is real and change is necessary.

Using existing bureaucracies within the current county governmental structure without meaningful independence is an inadequate approach. Specifically, the Grand Jury finds that enhancing the powers of the current Palm Beach County internal auditor will not be effective. In addition, the Grand Jury finds that the current external auditor position is by its very nature unsuitable to conducting forensic investigations. The Grand Jury finds that any meaningful improvement to the current audit roles will require additional resources, structural changes and adequate forensic expertise.

The Grand Jury also finds that the proposal for the Office of the Clerk to absorb the function into her existing duties is unlikely to be accepted by the BCC and may interfere with the existing roles of the respective office and entity. The Grand Jury acknowledges that personality conflicts or tension should not dictate or preclude appropriate and needed structural changes. However, the palpable acrimony that exists between the two governmental offices was not

missed by this Grand Jury. Second, the Office of Clerk proposal provides for fraud investigations to be turned over to the Sheriff's Office or State Attorney's Office but provides no template or resources for effective investigation and follow-up of non-criminal matters. The Grand Jury finds that an effective "watchdog" entity will need the institutional knowledge, resources and mandate to investigate waste, mismanagement and abuse as well as criminal fraud. Third, such an independent entity must not audit for policy reasons. The Grand Jury finds that previous Office of the Clerk audits of the Convention and Visitor Bureau in 2006 (attached as Exhibit 23) and *The Debt Process Review* in 2009 were primarily policy audits and not for investigative or forensic audit purposes.

The Grand Jury finds that the Miami-Dade County model of the Office of Inspector General (OIG) is the most effective means of achieving a truly independent and robust "watchdog" agency in Palm Beach County governance. The Grand Jury finds that far from being a "layer of bureaucracy" costing taxpayer dollars in a shrinking economy, an independent entity (whether an Office of Inspector General, a Performance and Chief Compliance Officer or an Independent Forensic Auditor) is a necessary component of an effective, responsive government. The Grand Jury also finds that the benefit to the taxpayer would not only be found in the exposure of fraud, waste, mismanagement and abuse, but also in the value of deterrence and the enhanced reputation of this county in the business community. The Grand Jury further finds that, with careful initial planning, only a fraction of the OIG budget will need to be funded through the county's general fund.

The Grand Jury recognizes that political will is the key component to a successful Inspector General's Office. The Grand Jury believes that the BCC must assertively and openly pursue this independent oversight. Thus, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners draft and pass an Ordinance establishing an independent Office of Inspector General or Performance and Chief Compliance Officer with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the county and entities funded in whole, or in part, by county tax dollars.
- The Grand Jury recommends that the Board of County Commissioners establish an independent oversight board consisting of the State Attorney's Office, Public Defender's Office, Sheriff's Office, President of the Police Chief's Association, the Chairman of a newly established Ethics Commission and a private resident of Palm Beach County to nominate and oversee the Inspector General/Performance & Chief Compliance Officer.
- The Grand Jury recommends the functions of the Inspector General/Performance/Chief Compliance Officer be modeled after the Miami-Dade County Ordinance establishing an Office of Inspector General.
- The Grand Jury recommends that to offset any direct taxpayer funding for this office the Board of County Commissioners require an agreement with county revenue producing departments to reimburse investigative costs and on site resources provided to those departments. In addition the Grand Jury recommends that all vendor contracts include a built-in proprietary fee of ¼ of 1% to help fund this new entity.
- The Grand Jury further recommends as previously indicated that the BCC fund an OIG or other similar independent "watchdog" entity through discretionary fund account dollars and pursue funding sources in subsequent years to reduce the use of county tax dollars.
- The Grand Jury recommends that the Palm Beach County Board of County Commissioners take immediate steps to establish and publicize a Palm Beach County Government hotline to report waste, fraud, mismanagement and abuse. This hotline must be administered by an independent entity once established.

#### IV. CONCLUSION

The Grand Jury acknowledges both the Palm Beach County governmental staff and the individual county commissioners for their cooperation in providing documentary evidence, and when requested, testimony regarding the five areas of governance reviewed by this Grand Jury. The Grand Jury acknowledges the numerous elected officials and other witnesses, who likewise voluntarily testified during the past four months. The Grand Jury recognizes that the areas reviewed have been, and continue to be, of great concern to the residents of Palm Beach County.



The Grand Jury concludes that Palm Beach County must consider, select and implement specific reforms to restore confidence in local governance. In this inquiry, the goal was not to develop a criminal case against any individual or entity. The objective was to identify and develop specific recommendations to achieve structural change in county government so that the community can have renewed confidence that the government works for them.

## DISTRIBUTION REQUEST

The Grand Jury requests that this Presentment be furnished to the following:

Hon. Charlie Crist, Governor  
Hon. Alex Sink, Chief Financial Officer  
Hon. Bill McCollum, Attorney General  
Hon. Jeff Atwater, Senate President  
Hon. Larry Cretul, House Speaker  
Hon. Dave Aronberg, State Senator  
Hon. Larcenia Bullard, State Senator  
Hon. Ted Deutch, State Senator  
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Hon. Sharon Bock, Clerk & Comptroller  
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Hon. Jeff Koons, County Commissioner Chair  
Hon. Burt Aaronson, County Commissioner Vice Chair  
Hon. Steven L. Abrams, County Commissioner  
Hon. Karen Marcus, County Commissioner  
Hon. Jess R. Santamaria, County Commissioner  
Hon. Shelley Vana, County Commissioner  
Robert Weisman, County Administrator  
Palm Beach County Criminal Justice Commission

## EXHIBIT LIST

### **General Items**

- 1- PBC Organizational Chart

### **Bond Underwriting**

- 2- GFOA Recommended Practices
  - a. Selecting Underwriters for Negotiated Bond Sales
  - b. Selecting Bond Counsel
  - c. Selecting and Managing the Method of Sale of State and Local Government Bonds
  - d. Pricing Bonds in a Negotiated Sale
- 3- PBC Competitive Selection of Bond Underwriters Policy for Negotiated Sales (Draft)
- 4- PBC Debt Issuance Process Review (Executive Summary)
- 5- PBC Debt Management Policy (Draft)

### **Land Transactions**

- 6- Dec 15, 2005 Interoffice Communication from Palm Beach County Property Appraiser
- 7- 3 Appraisals 06/09/2005, 11/23/2005, 05/25/2006 (Northlake Blvd Right-of-Way Acquisition)
- 8- Agenda Item Summary 12/05/2005 (Northlake Blvd Right-of-Way Acquisition)

### **Discretionary Funds**

- 9- 2009 Remaining Discretionary Funds by District

### **Ethics**

- 10- PBC Lobbyist Registration Ordinance
- 11- Miami-Dade Ordinance Establishing Commission on Ethics and Public Trust
- 12- Ethics Pledge
- 13- PBC Ethics Recommendations
- 14- Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

### **State and Federal Corruption Statutes**

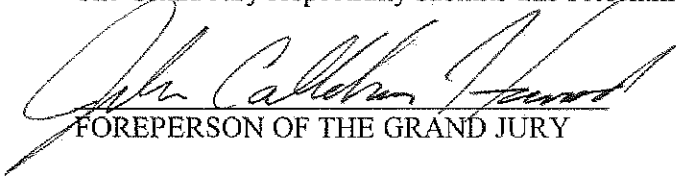
- 15- Leon County/Sansom Indictment and Presentment
- 16- Proposed Florida Statute 838.23 Theft or Deprivation of Honest Services

### **Palm Beach County Independent Oversight**


- 17- 2005 Internal Auditor Resolution
- 18- PBC 2007 External Audit Report
- 19- Clerk & Comptroller Proposal
- 20- Miami-Dade County Ordinance Establishing the Office of Inspector General
- 21- OIG Memorandum of Understanding
- 22- 2007 Miami-Dade County Inspector General Report
- 23- PBC Convention and Visitors Bureau Audit (Executive Summary)

**CERTIFICATION OF PRESENTMENT**

The Grand Jury respectfully submits this Presentment this the 21<sup>st</sup> day of May, 2009.

  
FOREPERSON OF THE GRAND JURY

As authorized and required by law, we have advised the Grand Jury returning this presentment.

  
MICHAEL F. McAULIFFE  
STATE ATTORNEY  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

  
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